

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 759
94TH GENERAL ASSEMBLY

Reported from the Committee on Agriculture, Conservation, Parks and Natural Resources, February 7, 2008, with recommendation that the Senate Committee Substitute do pass.

3573S.03C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal section 414.255, RSMo, and to enact in lieu thereof one new section relating to biodiesel, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Section 414.255, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 414.255, to read as follows:

414.255. 1. This section shall be known and may be cited as the "Missouri Renewable Fuel Standard Act".

2. For purposes of this section, the following terms shall mean:

(1) "Aviation fuel", any motor fuel specifically compounded for use in reciprocating aircraft engines;

(2) "Biodiesel", fuel as defined in ASTM Standard D-6751 or its subsequent standard specifications for biodiesel fuel (B100) blend stock for distillate fuels;

(3) "Biodiesel-blended fuel", a blend of biodiesel and conventional diesel fuel;

(4) "Conventional diesel fuel", a refined middle distillate suitable for use as a fuel in a compression-ignition (diesel) internal combustion engine. "Conventional diesel fuel" does not include biodiesel or biodiesel-blended fuel;

(5) "Distributor", a person who either produces, refines, blends, compounds or manufactures motor fuel, imports motor fuel into a state or exports motor fuel out of a state, or who is engaged in distribution of motor fuel;

[(3)] (6) "Fuel ethanol-blended gasoline", a mixture of ninety percent

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 gasoline and ten percent fuel ethanol in which the fuel ethanol meets ASTM
20 International Specification D4806, as amended. The ten percent fuel ethanol
21 portion may be derived from any agricultural source;

22 [(4)] (7) "Position holder", the person who holds the inventory position
23 in motor fuel in a terminal, as reflected on the records of the terminal operator.
24 A person holds the inventory position in motor fuel when that person has a
25 contract with the terminal operator for the use of storage facilities and
26 terminating services for motor fuel at the terminal. The term includes a terminal
27 operator who owns motor fuel in the terminal;

28 [(5)] (8) "Premium gasoline", gasoline with an antiknock index number
29 of ninety-one or greater;

30 [(6)] (9) "Price", the cost of the fuel ethanol plus fuel taxes and
31 transportation expenses less tax credits, if any; or the cost of the fuel
32 ethanol-blended gasoline plus fuel taxes and transportation expenses less tax
33 credits, if any; or the cost of the unblended gasoline plus fuel taxes and
34 transportation expenses less tax credits, if any; **or the cost of the biodiesel**
35 **plus fuel taxes and transportation expenses less tax credits, if any; or**
36 **the cost of the biodiesel-blended fuel plus fuel taxes and transportation**
37 **expenses less tax credits, if any; or the cost of the conventional diesel**
38 **fuel plus fuel taxes and transportation expenses less tax credits, if any;**

39 [(7)] (10) "Qualified terminal", a terminal that has been assigned a
40 terminal control number (tcn) by the Internal Revenue Service;

41 [(8)] (11) "Supplier", a person that is:

42 (a) Registered or required to be registered pursuant to 26 U.S.C., Section
43 4101, for transactions in motor fuels in the bulk transfer/terminal distribution
44 system; and

45 (b) One or more of the following:

46 a. The position holder in a terminal or refinery in this state;

47 b. Imports motor fuel into this state from a foreign country;

48 c. Acquires motor fuel from a terminal or refinery in this state from a
49 position holder pursuant to either a two-party exchange or a qualified buy-sell
50 arrangement which is treated as an exchange and appears on the records of the
51 terminal operator; or

52 d. The position holder in a terminal or refinery outside this state with
53 respect to motor fuel which that person imports into this state. A terminal
54 operator shall not be considered a supplier based solely on the fact that the

55 terminal operator handles motor fuel consigned to it within a
56 terminal. "Supplier" also means a person that produces fuel grade alcohol or
57 alcohol-derivative substances in this state, produces fuel grade alcohol or
58 alcohol-derivative substances for import to this state into a terminal, or acquires
59 upon import by truck, rail car or barge into a terminal, fuel grade alcohol or
60 alcohol-derivative substances. "Supplier" includes a permissive supplier unless
61 specifically provided otherwise;

62 [(9)] (12) "Terminal", a bulk storage and distribution facility which
63 includes:

64 (a) For the purposes of motor fuel, is a qualified terminal;

65 (b) For the purposes of fuel grade alcohol **and biodiesel**, is supplied by
66 truck, rail car, boat, barge or pipeline and the products are removed at a rack;
67 and

68 [(10)] (13) "Unblended gasoline", gasoline that has not been blended with
69 fuel ethanol.

70 3. Except as otherwise provided under subsections [4 and] 5 **and 7** of this
71 section, on and after January 1, 2008, all gasoline sold or offered for sale in
72 Missouri at retail shall be fuel ethanol-blended gasoline.

73 4. **Except as otherwise provided in subsections 6 and 7 of this**
74 **section, on and after April 1, 2010, all diesel fuel sold or offered for sale**
75 **in Missouri at retail shall be a biodiesel-blended fuel.**

76 5. If a distributor is unable to obtain fuel ethanol or fuel ethanol-blended
77 gasoline from a position holder or supplier at the terminal at the same or lower
78 price as unblended gasoline, then the purchase of unblended gasoline by the
79 distributor and the sale of the unblended gasoline at retail shall not be deemed
80 a violation of this section. **If a distributor can make fuel ethanol-blended**
81 **gasoline by blending fuel ethanol and unblended gasoline at the same**
82 **or lower price than the price of acquiring unblended gasoline at the**
83 **terminal, then the purchase of unblended gasoline at the terminal by**
84 **a distributor for such purpose shall not be deemed a violation of this**
85 **section.** The position holder, supplier, distributor, and ultimate vendor shall,
86 upon request, provide the required documentation regarding the sales transaction
87 and price of fuel ethanol, fuel ethanol-blended gasoline, and unblended gasoline
88 to the department of agriculture and the department of revenue. All information
89 obtained by the departments from such sources shall be confidential and not
90 disclosed except by court order or as otherwise provided by law.

91 **6. If a distributor is unable to obtain biodiesel or biodiesel-**
92 **blended fuel from a position holder or supplier at the terminal at the**
93 **same price or lower price as conventional diesel fuel, then the purchase**
94 **of conventional diesel fuel by the distributor and the sale of**
95 **conventional diesel fuel at retail shall not be deemed a violation of this**
96 **section. If a distributor can make five-percent biodiesel-blended fuel**
97 **by blending biodiesel and conventional diesel fuel at the same or lower**
98 **price than the price of acquiring conventional diesel fuel at the**
99 **terminal, then the purchase of conventional diesel fuel at the terminal**
100 **by a distributor for such purpose shall not be deemed a violation of this**
101 **section. The position holder, supplier, distributor, and ultimate vendor**
102 **shall, upon request, provide the required documentation regarding the**
103 **sales transaction and price of biodiesel, biodiesel-blended fuel, and**
104 **conventional diesel fuel to the department of agriculture and the**
105 **department of revenue. All information obtained by the departments**
106 **from such sources shall be confidential and not disclosed except by**
107 **court order or as otherwise provided by law.**

108 **[5.] 7. The following shall be exempt from the provisions of this section:**

- 109 (1) Aviation fuel and automotive gasoline used in aircraft;
110 (2) Premium gasoline;
111 (3) E75-E85 fuel ethanol;
112 (4) **Diesel fuel sold to or used by railroad on-track equipment;**
113 (5) **Diesel fuel sold to or used by motors located at an electric**
114 **generation plant regulated by the Nuclear Regulatory Commission;**
115 (6) Any specific exemptions declared by the United States Environmental
116 Protection Agency; and

117 **[(5)] (7) Bulk transfers between terminals.**

118 The director of the department of agriculture may by rule, **subject to the**
119 **provisions of chapter 536, RSMo,** exempt or rescind additional gasoline **and**
120 **diesel** uses from the requirements of this section. The governor may by
121 executive order waive the requirements of this section or any part thereof in part
122 or in whole for all or any portion of this state [for reasons related to air
123 quality]. Any regional waiver shall be issued and implemented in such a way as
124 to minimize putting any region of the state at a competitive advantage or
125 disadvantage with any other region of the state.

126 **[6.] 8. The provisions of section 414.152 shall apply for purposes of**

127 enforcement of this section.

128 **[7.] 9.** The department of agriculture is hereby authorized to promulgate
129 rules to ensure implementation of, and compliance and consistency with, this
130 section. **In adopting its rules, the department shall as far as practicable**
131 **adopt and apply to biodiesel producers the requirements of an**
132 **accredited producer contained in the BQ-9000 program of the National**
133 **Biodiesel Accreditation Commission.** Any rule or portion of a rule, as that
134 term is defined in section 536.010, RSMo, that is created under the authority
135 delegated in this section shall become effective only if it complies with and is
136 subject to all of the provisions of chapter 536, RSMo, and, if applicable, section
137 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any
138 of the powers vested with the general assembly pursuant to chapter 536, RSMo,
139 to review, to delay the effective date, or to disapprove and annul a rule are
140 subsequently held unconstitutional, then the grant of rulemaking authority and
141 any rule proposed or adopted after August 28, 2006, shall be invalid and void.

142 **[8.] 10.** All terminals in Missouri that sell gasoline shall offer for sale,
143 in cooperation with position holders and suppliers, fuel ethanol-blended gasoline,
144 fuel ethanol, and unblended gasoline. Terminals that only offer for sale federal
145 reformulated gasolines, in cooperation with position holders and suppliers, shall
146 not be required to offer for sale unblended gasoline.

147 **[9.] 11.** On and after January 1, 2010, all terminals in Missouri
148 that sell diesel fuel shall offer for sale, in cooperation with position
149 holders and suppliers, biodiesel-blended fuel containing five percent
150 biodiesel by volume, biodiesel, and conventional diesel fuel. It shall not
151 be a violation of this section for a terminal to sell biodiesel-blended
152 fuel containing more than five percent biodiesel by volume, provided
153 any such sale conforms with subsection 12 of this section.

154 **12.** Any seller of biodiesel-blended fuel containing greater than
155 five percent biodiesel by volume shall notify any purchaser of the
156 biodiesel content of such fuel, in accordance with notification
157 procedures established by rule by the department of agriculture. The
158 notification requirements for the sale of such fuel at retail shall also
159 include an advisement to the purchaser to consult his or her owner's
160 manual regarding motor vehicle warranty and recommended fuel use.

161 **13.** Notwithstanding any other law to the contrary, all fuel retailers,
162 wholesalers, distributors, and marketers shall be allowed to purchase fuel ethanol

163 **or biodiesel** from any terminal, position holder, fuel ethanol **or biodiesel**
164 producer, fuel ethanol **or biodiesel** wholesaler, or supplier. In the event a court
165 of competent jurisdiction finds that this subsection does not apply to or
166 improperly impairs existing contractual relationships, then this subsection shall
167 only apply to and impact future contractual relationships.

168 **14. The department of agriculture shall, by rule, develop**
169 **standards for cold temperature operability properties of biodiesel and**
170 **shall have the power to enforce that all biodiesel and biodiesel-blended**
171 **fuel offered for sale on or after January 1, 2010, in the state meets such**
172 **standards.**

173 **15. Notwithstanding the provisions of subsection 8 to the**
174 **contrary, any person who produces biodiesel intended for market that**
175 **does not meet the quality standard for biodiesel, as promulgated by**
176 **rule by the department of agriculture, may be assessed a civil penalty**
177 **by the director of the department of agriculture of not more than ten**
178 **thousand dollars for each violation. Each violation shall be a separate**
179 **offense. In addition, the director may issue an order requiring the**
180 **person to cease and desist from continuing the violation. No penalty**
181 **shall be assessed nor a cease and desist order be issued unless the**
182 **person is given notice and opportunity for a hearing before the director**
183 **with respect to the violation. The order of the director assessing a**
184 **penalty or imposing a cease and desist order shall be final and**
185 **conclusive unless the person affected by the order files a petition for**
186 **review under chapter 536, RSMo. Any person who fails to obey a cease**
187 **and desist order after it has become final shall be subject to a civil**
188 **penalty assessed by the director, after an opportunity for hearing**
189 **before the director, of not more than five hundred dollars for each**
190 **offense. Each day during which the failure continues shall be deemed**
191 **a separate offense. If any person fails to pay an assessment of a civil**
192 **penalty after it has become a final order, the director shall refer the**
193 **matter to the attorney general for recovery of the amount assessed in**
194 **any appropriate circuit court of the state. In such action, the validity**
195 **and appropriateness of the final order imposing the civil penalty shall**
196 **not be subject to review.**